

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TIMOTHY A. WHITMORE,

Plaintiff,

v.

PIERCE COUNTY DEPARTMENT OF  
COMMUNITY CORRECTIONS *et al.*,

Defendants.

Case No. C05-5265RBL

ORDER DENYING PLAINTIFF'S  
MOTION FOR SANCTIONS AND  
CLOSING DISCOVERY

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff paid the full filing fee and is not proceeding *in forma pauperis*. Before the court is plaintiff's motion for sanctions regarding discovery. Three different versions of the motion were filed (Dkt. # 199, 200, and 201). The court accepts the final version as the document plaintiff wishes the court to address (Dkt. # 201). Defendants have responded, (Dkt. # 204, 205, and 206), plaintiff has replied (Dkt # 208). The pleadings in this action are becoming increasingly acrimonious. The parties are cautioned. This court does not condone such behavior.

Local Rule 37 (a)(2)(A) mandates the parties meet and confer prior to a motion to compel being filed. While this may not technically be a motion to compel, plaintiff seeks sanctions

1 for alleged discovery abuses. The rule applies. The failure of the parties to meet and confer, in and  
2 of itself, is grounds for denial of this motion.

3 On the merits, plaintiff's motion is also denied. The defendants allege the discovery requests  
4 in question were never properly served (Dkt. # 204, page 2). In response plaintiff directs the court  
5 to (Dkt. # 140). This document is titled "Notice that Service of Subpoenas is Imminent; Subpoenas  
6 Have Been Delivered to Processor; Advance Notice of Contents of Those Subpoenas." The filing  
7 does not purport to be service itself.

8 Despite the lack of properly served subpoenas, the defendants allege they have given Mr.  
9 Whitmore access to the files in their possession and allowed him to make copies at his own expense  
10 (Dkt. # 204, page 3). Defendants contend that if Mr. Whitmore does not have a copy of a document  
11 it is because he did not copy it, or it is not in the defendants possession. Plaintiff claims he is not  
12 always provided with every page of document. He notes several faxes begin with page numbers  
13 higher than one. In the case of faxes the defendants aver the first page and sometimes the first two  
14 pages are cover sheets and requests which are not normally saved.

15 Mr. Whitmore replies and argues many documents are now missing from his files, and he  
16 alleges some unnamed entity has removed several documents important to his case (Dkt. # 208). He  
17 asks that several of his allegations be considered as proven in both his initial motion and in his reply  
18 (Dkt. # 201, page 2, Dkt. # 208, page 6). Plaintiff cites to Fed. R. Civ. P. 26 and 37 as authority for  
19 the courts ruling certain "facts" as established. Fed. R. Civ. P. 26 does not support plaintiffs  
20 position. Fed. R. Civ. P 37 (b)(2)(A) allows a court to take facts as established if a party has failed  
21 to comply with a prior court order. Here, there has been no failure to comply with a prior court  
22 order.

23 This action challenges Mental Health treatment and conditions of confinement at the Pierce  
24 County Jail. Discovery in this action was to be concluded by February of 2007. Defendants moved  
25 for partial summary judgment in January of 2007, prior to the close of discovery (Dkt. # 113 and  
26 126). Plaintiff objected to having to address those motions prior to obtaining discovery related to  
27 Mental Health treatment. The court granted plaintiff a continuance (Dkt. # 157).

1 Twenty days after entering the continuance the court found it necessary to stay this action  
2 (Dkt. # 170). The stay was entered until a discovery issue with Pierce County was addressed.  
3 Plaintiff was attempting to depose Jail employees and his attempts to serve subpoenas appeared to be  
4 impeded. Pierce County quickly responded to the stay and provided information on how plaintiff  
5 could proceed with his discovery.

6 Plaintiff now seeks sanctions, but he fails to show his requests for discovery were ever  
7 properly served as requests. Further, defendants aver they have given plaintiff access to the  
8 documents in their possession. Plaintiff's motion for sanctions is **DENIED**. Discovery in this action  
9 was to have been concluded in February of this year. Discovery is now closed.

10 The clerks office is directed to send a copy of this order to plaintiff and counsel for  
11 defendants.

12  
13 DATED this 24 day of May, 2007.

14  
15 /S/ J. Kelley Arnold  
16 J. Kelley Arnold  
17 United States Magistrate Judge  
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